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December 1, 2021

By ECF

Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Honorable Debra Freeman
United States Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
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Re: *Endurance Services Limited et al v. Westfield Insurance Company et al. (Case No. 21-cv-07852) (LS/DF)*

Dear Judges Schofield and Freeman:

We write to advise the Court that our clients, Plaintiffs Endurance Services Limited and Sompo International Holdings Ltd. (together, “Sompo International”), yesterday filed an amended complaint in this case. ECF No. 35. This was done in accordance with paragraph 6 of the Court’s civil case management plan and scheduling order of October 29, 2021. ECF No. 28.

We respectfully bring this to the Court’s attention because there is a pending motion to dismiss that addresses Sompo International’s original complaint. As we said in our letter to the Court of October 12:

[W]e believe expedited and focused discovery should proceed and we hope Westfield can be convinced to reconsider its intent to move to dismiss prior to such discovery because (i) even without discovery, the Complaint sufficiently states a claim and (ii) discovery of facts that are almost exclusively within the possession of Westfield and its employees will almost certainly lead to one or more amendments of the Complaint so a motion now would be directed against a moving target. ECF No. 15.

Regrettably, this is precisely what has happened. Further, despite the Court’s admonition to Defendants during our telephonic conference on October 28 that they were not to slow-walk discovery, they have done just that and a conference is scheduled before Magistrate Judge Freeman on December 17. Defendants’ extraordinarily scant and cherry-picked document production is entirely consistent with a party trying to hide incriminating evidence and will, as we predicted, almost surely lead to an application to permit a further amendment of the complaint once there has been meaningful discovery.

We very much regret this unfortunate and unnecessary imposition on the Court’s precious resources. Because Plaintiffs filed an amended complaint after Defendants filed their motion to dismiss, the motion to dismiss is DENIED as moot.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 24.

Dated: December 2, 2021

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LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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Respectfully submitted,



Steven M. Kayman

cc: John J. Haggerty, Fox Rothschild LLP (via ECF)
James C. Clark, Fox Rothschild LLP (via ECF)